

भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 24] नई दिल्ली, बुधवार, मई 7, 1986/वैशाख 17, 1908
No. 24] NEW DELHI, WEDNESDAY, MAY 7, 1986/ VAISAKHA 17, 1908

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 7th May, 1986:—

BILL No. 54 OF 1986

A Bill further to amend the Wild Life (Protection) Act, 1972.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Wild Life (Protection) Amendment Act, 1986.

Short
title
and com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

53 of 1972.

2. In the Wild Life (Protection) Act, 1972 (hereinafter referred to as the principal Act), in sub-section (1) of section 44,—

Amend-
ment of
section 44.

(a) in the opening paragraph,—

(i) for the words, brackets and figure "Except under, and in accordance with, a licence granted under sub-section (4), no person shall", the words, figures, letter and brackets "Subject to the provisions of Chapter VA, no person shall, except under, and in accordance with, a licence granted under sub-section (4)" shall be substituted;

(ii) after sub-clause (i), the following sub-clause shall be inserted, namely:—

“(ia) a manufacturer of, or dealer in, any article made of ivory imported into India;”;

(b) for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that nothing in this sub-section shall apply to manufacturers of, and dealers in, articles made of feathers of peacock.”.

Insertion
of new
Chapter
VA.

3. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

‘CHAPTER VA

PROHIBITION OF TRADE OR COMMERCE IN TROPHIES, ANIMAL ARTICLES, ETC., DERIVED FROM CERTAIN ANIMALS

Defini-
tions.

49A. In this Chapter,—

(a) “scheduled animal” means an animal specified for the time being in Schedule I or Part II of Schedule II;

(b) “scheduled animal article” means an article made from any scheduled animal and includes an article or object in which the whole or any part of such animal has been used;

(c) “specified date” means—

(i) in relation to a scheduled animal on the commencement of the Wild Life (Protection) Amendment Act, 1986, the date of expiry of two months from such commencement; and

(ii) in relation to any animal added or transferred to Schedule I or Part II of Schedule II at any time after such commencement, the date of expiry of two months from such addition or transfer.

Prohibi-
tion of
dealings
in troph-
ies,
animal
articles,
etc., de-
rived from
schedul-
ed ani-
mals.

49B. (1) Subject to the other provisions of this section, on and after the specified date, no person shall,—

(a) commence or carry on the business as—

(i) a manufacturer of, or dealer in, scheduled animal articles; or

(ii) a taxidermist with respect to any scheduled animals or any parts of such animals; or

(iii) a dealer in trophy or uncured trophy derived from any scheduled animal; or

(iv) a dealer in any captive animals being scheduled animals; or

(v) a dealer in meat derived from any scheduled animal; or

(b) cook or serve meat derived from any scheduled animal in any eating-house.

Explanation.—For the purposes of this sub-section, "eating-house" has the same meaning as in the *Explanation* below sub-section (1) of section 44.

(2) Subject to the other provisions of this section, no licence granted or renewed under section 44 before the specified date shall entitle the holder thereof or any other person to commence or carry on the business referred to in clause (a) of sub-section (1) of this section or the occupation referred to in clause (b) of that sub-section after such date.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), where the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by general or special order published in the Official Gazette, exempt, for purposes of export, any corporation owned or controlled by the Central Government (including a Government company within the meaning of section 617 of the Companies Act, 1956), or any society registered under the Societies Registration Act, 1860 or any other law for the time being in force, wholly or substantially financed by the Central Government, from the provisions of sub-sections (1) and (2).

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), but subject to any rules which may be made in this behalf, a person holding a licence under section 44 to carry on the business as a taxidermist may put under a process of taxidermy any scheduled animal or any part thereof,—

(a) for or on behalf of the Government or any corporation or society exempted under sub-section (3), or

(b) with the previous authorisation^r in writing of the Chief Wild Life Warden, for and on behalf of any person for educational or scientific purposes.

49C. (1) Every person carrying on the business or occupation referred to in sub-section (1) of section 49B shall, within thirty days from the specified date, declare to the Chief Wild Life Warden or the authorised officer,—

Declara-
tion by
dealers.

(a) his stocks, if any, as at the end of the specified date of—

(i) scheduled animal articles;

(ii) scheduled animals and parts thereof;

(iii) trophies and uncured trophies derived from scheduled animals;

(iv) captive animals, being scheduled animals;

(b) the place or places at which the stocks mentioned in the declaration are kept; and

(c) the description of such items, if any, of the stocks mentioned in the declaration which he desires to retain with himself for his *bona fide* personal use.

(2) On receipt of a declaration under sub-section (1), the Chief Wild Life Warden or the authorised officer may take all or any of the measures specified in section 41 and for this purpose, the provisions of section 41 shall, so far as may be, apply.

(3) Where, in a declaration made under sub-section (1), the person making the declaration expresses his desire to retain with himself any of the items of the stocks specified in the declaration for his *bona fide* personal use, the Chief Wild Life Warden, with the prior approval of the Director, may, if he is satisfied that the person is in lawful possession of such items, issue certificates of ownership in favour of such person with respect to all, or as the case may be, such of the items as in the opinion of the Chief Wild Life Warden, are required for the *bona fide* personal use of such person and affix upon such items identification marks in such manner as may be prescribed:

Provided that no such item shall be kept for display in any commercial premises.

(4) No person shall obliterate or counterfeit any identification mark referred to in sub-section (3).

(5) An appeal shall lie against any refusal to grant certificate of ownership under sub-section (3) and the provisions of sub-sections (2), (3) and (4) of section 46 shall, so far as may be, apply in relation to appeals under this sub-section.

(6) Where a person who has been issued a certificate of ownership under sub-section (3) in respect of any item,—

(a) transfers such item to any person, whether by way of gift, sale or otherwise, or

(b) transfers or transports from the State in which he resides to another State any such item,

he shall, within thirty days of such transfer or transport, report the transfer or transport to the Chief Wild Life Warden or the authorised officer within whose jurisdiction the transfer or transport is effected.

(7) No person, other than a person who has been issued a certificate of ownership under sub-section (3) shall, on and after the specified date, keep under his control, sell or offer for sale or transfer to any person any scheduled animal or a scheduled animal article.

Amend-
ment of
section 51.

4. In section 51 of the principal Act,—

(a) in sub-section (1), for the words “contravenes any provision of this Act”, the words, brackets, figure and letter “contravenes any provision of this Act (except Chapter VA)” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and also with fine which shall not be less than five thousand rupees”.

Amend-
ment of
section 63.

5. In sub-section (1) of section 63 of the principal Act, after clause (c), the following clause shall be inserted, namely:—

“(d) any other matter which is required to be, or may be, prescribed.”

STATEMENT OF OBJECTS AND REASONS

The Wild Life (Protection) Act, 1972 provides for the protection of wild animals and birds and for matters connected therewith or ancillary thereto.

2. Under the scheme of the Act, trade or commerce in wild animals, animal articles and trophies within the country is permissible and is regulated under Chapter V. Since there is hardly any market within the country for wild animals or articles and derivatives thereof, the stocks acquired for trade within the country are smuggled out to meet the demand in foreign markets. This clandestine trade is abetted by illegal practices of poaching which have taken a heavy toll of our wild animals and birds. The stocks declared by the traders at the commencement of the Wild Life (Protection) Act, 1972 are still used as a cover for such illicit trade. Attempts to acquire the declared stocks of skins of some wild species have also not met with the desired success, mainly because most traders are not inclined to part with their stocks and thereby lose the ploy for illegal activities. It is, therefore, necessary to suitably amend the Act to prohibit trade in certain specified wild animals or their derivatives. It is, therefore, proposed to provide that no one will be permitted to trade in wild animals specified in Schedule I or Part II of Schedule II of the Act or in any derivatives therefrom after a period of two months from the commencement of the amending Act or two months from the date on which a wild animal is included in Schedule I or part II of Schedule II by notification issued under the provisions of the Act. All existing licences for internal trade would be invalid thereafter. Further no fresh licences would be granted for internal trade on such wild animals or their derivatives in future. An exemption is being given to notified Government of India undertakings who can purchase stocks from licensees during the specified period of two months for manufacturing articles from them exclusively for export. The exemption at present available to dealers in ivory under the second proviso to section 44(1) is also being removed so as to enforce a total ban in dealing in Indian ivory and simultaneously to provide for some regulation over the manufacture and trade of articles made out of imported ivory.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

The 30th April, 1986.

Z. R. ANSARI.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to amend sub-section (1) of section 63 of the Wild Life (Protection) Act, 1972 so as to make a residuary provision in that sub-section enabling the Central Government to make rules in respect of such other matters which are required to be or may be prescribed under the Act.

The delegation of legislative power is thus normal in character.

BILL No. 57 OF 1986

A Bill to provide for the protection and improvement of environment and for matters connected therewith.

WHEREAS decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

AND WHEREAS it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Environment (Protection) Act, 1986.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas.

Short
title, ex-
tent and
com-
mence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property;

(b) "environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be or tend to be injurious to environment;

(c) "environmental pollution" means the presence in the environment of environmental pollutants;

(d) "handling", in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substances;

(e) "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment;

(f) "occupier", in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes, in relation to any substance, the person in possession of the substance;

(g) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

GENERAL POWERS OF THE CENTRAL GOVERNMENT

Power of Central Government to take measures to protect and improve environment.

3. (1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—

(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever not being a ship or an aircraft:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute and authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section (5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) and (3) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so

mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

Appoint-
ment of
officers
and their
powers
and func-
tions.

4. (1) Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may appoint officers with such designations such of the powers and functions under this Act as it may deem fit.

(2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by that Government also of the authority or authorities, if any, constituted under sub-section (3) of section 3 or of any other authority or officer.

Power
to give
direc-
tions

5. Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act may issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct,—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.

Rules
to regu-
late en-
viron-
mental
pollu-
tion.

6. (1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the standards of quality of air, water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;

(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

CHAPTER III

PREVENTION, CONTROL AND ABATEMENT OF ENVIRONMENTAL POLLUTION

7. No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

Persons carrying on industry, operation etc., not to allow emission or discharge of environmental pollutants in excess of the standards.

8. No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

Persons handling hazardous substances to comply with procedural safeguards.

9. (1) Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith—

Furnishing of information, etc. authorities and agencies in certain cases.

(a) intimate the fact of such occurrence or apprehension of such occurrence; and

(b) be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed.

(2) On receipt of information with respect to the fact or apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the authorities or agencies referred to in sub-section (1) shall, as early as practicable, cause such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution.

(3) The expenses, if any, incurred by any authority or agency with respect to the remedial measures referred to in sub-section (2), together with interest (at such reasonable rate as the Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by such authority or agency from the person concerned as arrears of land revenue or of public demand.

Powers
of entry
and ins-
pection.

10. (1) Subject to the provisions of this section, any person empowered by the Central Government in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place—

(a) for the purpose of performing any of the functions of the Central Government entrusted to him;

(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with;

(c) for the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any buildings in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder or that such seizure is necessary to prevent or mitigate environmental pollution.

(2) Every person carrying on any industry, operation or process or handling any hazardous substance shall be bound to render all assistance to the person empowered by the Central Government under sub-section (1) for carrying out the functions under that sub-section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.

(3) If any person wilfully delays or obstructs any person empowered by the Central Government under sub-section (1) in the performance of his functions, he shall be guilty of an offence under this Act.

(4) The provisions of the Code of Criminal Procedure, 1973, or, in relation to the State of Jammu and Kashmir, or any area in which that Code is not in force, the provisions of any corresponding law in force in that State or area shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code or, as the case may be, under the corresponding provision of the said law.

Power to
take sample
and proce-
dure to be
followed in
connection
therewith.

11. (1) The Central Government or any officer empowered by it in this behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed.

(2) The result of any analysis of a sample taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.

(3) Subject to the provisions of sub-section (4), the person taking the sample under sub-section (1) shall—

(a) serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;

(b) in the presence of the occupier or his agent or person, collect a sample for analysis;

(c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or other person;

(d) send without delay, the container or the containers to the laboratory established or recognised by the Central Government under section 12.

(4) When a sample is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent or person, a notice under clause (a) of sub-section (3), then,—

(a) in a case where the occupier, his agent or person wilfully absents himself, the person taking the sample shall collect the sample for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent or person present at the time of taking the sample refuses to sign the marked and sealed container or containers of the sample as required under clause (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples,

and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognised under section 12 and such person shall inform the Government Analyst appointed or recognised under section 13 in writing, about the wilful absence of the occupier or his agent or person, or, as the case may be, his refusal to sign the container or containers.

12. (1) The Central Government may, by notification in the Official Gazette,—

(a) establish one or more environmental laboratories;

(b) recognise one or more laboratories or institutes as environmental laboratories to carry out the functions entrusted to an environmental laboratory under this Act.

(2) The Central Government may, by notification in the Official Gazette, make rules specifying—

(a) the functions of the environmental laboratory;

(b) the procedure for the submission to the said laboratory of samples of air, water, soil or other substance for analysis or tests, the form of the laboratory report thereon and the fees payable for such report;

(c) such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

13. The Central Government may, by notification in the Official Gazette, appoint or recognise such person as it thinks fit and having the prescribed qualifications to be Government Analysts for the purpose of analysis of samples of air, water, soil or other substance sent for analysis to any environmental laboratory established or recognised under sub-section (1) of section 12.

Environ-
mental
laborato-
ries,

Govern-
ment
Analysts.

Reports of
Government
Analysts.

14. Any document purporting to be a report signed by a Government Analyst may be used as evidence of the facts stated therein in any proceeding under this Act.

Penalty for
contraven-
tion of the
provisions
of the Act
and the
rules, orders
and
direc-
tions.

15. (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

Offences by
companies.

16. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Offences by
Government
Depart-
ments.

17. (1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER IV

MISCELLANEOUS

18. No suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government or any authority constituted under this Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.

Protection
of action
taken in
good faith.

19. No court shall take cognizance of any offence under this Act except on a complaint made by—

Cognizance
of offences.

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

Provided that cognizance of an offence shall not be taken under clause (b) where, during the said period of sixty days, the Central Government or the authority or officer as aforesaid has itself or himself made a complaint to the court of competent jurisdiction of the alleged offence or has communicated to the said person of its or his refusal to make such a complaint.

20. The Central Government may, in relation to its functions under this Act, from time to time, require any person, officer, State Government or other authority to furnish to it or any prescribed authority or officer any reports, returns, statistics, accounts and other information and such person, officer, State Government or other authority shall be bound to do so.

Information,
reports or
returns.

21. All the members of the authority, constituted, if any, under section 3 and all officers and other employees of such authority when acting or purporting to act in pursuance of any provisions of this Act or the rules made or orders or directions issued thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members,
officers and
employees
of the
authority
constituted
under
section 3
to be public
servants.

22. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act.

Bar of
jurisdiction.

Power to
delegate.

23. Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act [except the power to constitute an authority under sub-section (3) of section 3 and to make rules under section 25] as it may deem necessary or expedient, to any officer, State Government or other authority.

Effect of
other laws.

24. (1) Save as otherwise provided by or under the Atomic Energy Act, 1962 in relation to radio-active air pollution and subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. 33 of 1962.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

Power to
make rules.

25. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the standards in excess of which environmental pollutants shall not be discharged or emitted under section 7;

(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or cause to be handled under section 8;

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9;

(d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of section 11;

(e) the form in which notice of intention to have a sample analysed shall be served under clause (a) of sub-section (3) of section 11;

(f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;

(g) the qualifications of Government Analyst appointed or recognised for the purpose of analysis of samples of air, water, soil or other substances under section 13;

(h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 19;

(i) the authority or officer to whom any reports, returns, statistics, accounts and other information shall be furnished under section 20;

(j) any other matter which is required to be, or may be, prescribed.

26. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Rules
made
under
this Act
to be laid
before
Parliament.

STATEMENT OF OBJECTS AND REASONS

Concern over the state of environment has grown the world over since the sixties. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1979. Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

2. Although there are existing laws dealing directly or indirectly with several environmental matters, it is necessary to have a general legislation for environmental protection. Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous substances, especially new chemicals, in the environment are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long term requirements of environmental safety and to give direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment.

3. In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which *inter alia* should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

Z. R. ANSARI.

The 2nd May, 1986.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 1(1)/86-PL, dated the 2nd May, 1986 from Shri Z. R. Ansari, Minister of State in the Ministry of Environment & Forests to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Environment (Protection) Bill, 1986 recommends the consideration of the Bill in Lok Sabha under article 117(3) of the Constitution.

Notes on clauses

Clause 1 deals with the short title, extent and commencement of the legislation. The legislation will come into force on the date notified by the Central Government and different dates may be notified for different provisions and for different areas.

Clause 2 defines the various words and expressions used in the Bill.

Clause 3 vests power in the Central Government to take all such measures as are necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling or abating environmental pollution. The clause also enumerates some of such measures. This clause further empowers the Central Government to constitute an authority or authorities for the purpose of the legislation.

Clause 4 empowers the Central Government to appoint officers for the purpose of the legislation.

Clause 5 empowers the Central Government, in exercise of its powers and performance of its functions under the legislation, to issue directions to any person, officer or authority.

Clause 6 empowers the Central Government to make rules to carry out the purpose of the legislation in relation to matters falling within the purview of section 3. The clause also enumerates some of the matters on which such rules may be made.

Clause 7 prohibits carrying on of any industry, operation or process which discharges or emits any environmental pollution in excess of the standards laid down under the rules.

Clause 8 enjoins upon persons to comply with the procedures laid down and safeguards prescribed under the rules in the handling of hazardous substances.

Clause 9 enjoins upon the persons responsible to mitigate environmental pollution and also to intimate the fact of any occurrence or apprehension of any occurrence relating to environmental pollution to the prescribed authorities and further to assist those authorities in preventing or mitigating environmental pollution. The expenses, if any, incurred with respect to remedial measures shall be recoverable from the persons responsible.

Clause 10 enables the officers empowered by the Central Government to enter and inspect any place for the purpose of performing any functions entrusted under the legislation. This clause also enjoins upon the persons carrying on any industry, operation or process or handling any hazardous substance to render all assistance to the Central Government and its officers and any failure or wilful delay or obstruction on the part of any such person shall be punishable under the legislation.

Clause 11 deals with the power of the Central Government and its officers to take samples of air, water, soil or substances and the procedure for taking of such samples.

Clause 12 empowers the Central Government to establish environmental laboratories or recognise any laboratory or institute as an environmental laboratory.

Clause 13 empowers the Central Government to appoint or recognise Government Analysts for the purpose of analysis of samples of air, water soil or any other substance.

Clause 14 lays down that any document purporting to be a report signed by the Government Analysts may be used as evidence of the facts stated therein in any proceeding under the legislation.

Clause 15 provides for the penalty for contravention of any provisions of the legislation or any rules made or orders or directions issued therein. The punishment provided for the first offence may extend to five years imprisonment or fine of one lakh rupees or both and in case of continuing contravention additional fine of rupees five thousand for every day and an enhanced sentence of imprisonment for a term which may extend to seven years where contravention continued beyond a period of one year after the date of conviction.

Clause 16 fixes criminal liability also on the directors and principal officers of a company where an offence is committed by a company.

Clause 17 fixes criminal liability also on the Heads of the Department of Government where an offence is committed by the concerned Department and the head of the Department is not able to prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Clause 18 protects the officers and the employees of the Government from prosecution or other legal proceedings for the acts done or intended to be done in good faith under the legislation or the rules made or orders or directions issued thereunder.

Clause 19 lays down that no court shall take cognizance of any offence under the legislation except on a complaint made by the Central Government or any authority or officers authorised in this behalf or by any person who has given notice of not less than sixty days of his intention to make a complaint, if within those sixty days the Government or officer has itself or himself not made the complaint and has not communicated to such person its or his refusal to make such a complaint.

Clause 20 empowers the Central Government to require any person, officer, State Government or other authority to furnish information reports or returns etc.

Clause 21 lays down that the members of the authority under section 3 and all officers and employees of the Government or such authority shall be public servants.

Clause 22 bars the jurisdiction of civil courts to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under the legislation.

Clause 23 empowers the Central Government to delegate all or any of its powers under the legislation to any officer, State Government or authority.

Clause 24 deals with the effect of the proposed legislation on other laws.

Clause 25 empowers the Central Government to make rules for carrying out the purposes of the proposed legislation.

Clause 26 requires the rules to be laid before Parliament.

FINANCIAL MEMORANDUM

The broad scheme of the Bill is mainly to achieve co-ordination of activities and functions of the existing statutory and other agencies in the field of environmental protection at the Central and State levels.

Clause 3(2) provides for the following:

(i) Laying down standards for the quality of environment in its various aspects [Sub-clause (iii)].

(ii) Laying down standards for emission or discharge of environmental pollutants from various sources whatsoever not being a ship or an aircraft [Sub-clause (iv)].

(iii) Carrying out and sponsoring investigations and research relating to problems of environmental pollution [Sub-clause (ix)].

(iv) Collection and dissemination of information in respect of matters relating to environmental pollution [Sub-clause (xii)].

(v) Preparation of manuals, codes and guides relating to prevention, control and abatement of environmental pollution [Sub-clause (xiii)].

It is, however, not possible to visualise at this stage the actual expenditure which may be involved on this account. After the proposed authority becomes fully operational, the recurring annual expenditure on the above items is likely to be of the order of rupees 10 lakhs.

Clause 3(3) of the Bill contains a provision under which the Central Government may, by order, if it considers necessary or expedient so to do, constitute an authority or authorities for the purpose of exercising such of the powers and functions of the Central Government as may be mentioned in the order. This is an enabling provision. The decision when to constitute an authority or authorities and, if so, what should be the composition of such authority or authorities, will have to be taken after considering the relevant factors. In the circumstances, it is not possible at this stage to exactly visualise the nature and quantum of the expenditure which may be involved in constituting such authority or authorities under this sub-clause. However, as and when the authority is set up, secretarial assistance will be provided by the Department of Environment, Forests and Wildlife. As the authority's activities will grow in a phased manner, the annual recurring expenditure, payment of salaries, fees, allowances (including travelling allowances) is expected to be of the order of Rs. 5 lakhs initially and will stabilise around a level of 12 lakhs.

Clause 4(1) of the Bill also contains an enabling provision. To begin with, officers already working in statutory or other agencies, should be entrusted with the additional powers and functions under the proposed legislation and, therefore, no additional expenses will be involved under this clause.

Clause 12(1) provides that the Central Government may, by notification in the Official Gazette, (a) establish one or more environmental laboratories or (b) recognise one or more laboratories or institutes as environmental laboratories to carry out the functions entrusted to the environmental laboratories under the legislation. It is not possible at this stage to visualise the number of environmental laboratories that will be established or recognised, or the equipment or personnel needed. The existing laboratory, facilities available in different parts of the country will have to be examined before taking any final decisions. Efforts will have to be made to fully utilise existing facilities and avoid needless duplication. However, it is necessary to establish or recognise one main laboratory and four regional laboratories. The non-recurring expenditure on lands and buildings for the five laboratories is likely to be around rupees 300 lakhs. For fully equipping the laboratories the non-recurring expenditure will be of the order of rupees 500 lakhs. The above expenditure is likely to be spread over a period of five years. The above expenditure will be incurred if all the five laboratories are to be established without utilising the existing facilities.

The annual recurring expenditure on each laboratory is likely to be around rupees 5 lakhs in the initial phases and rupees 12 to 15 lakhs after full development. It may, in fact, be necessary to establish only one or two such laboratories and recognise existing laboratories (as environmental laboratories) after suitable strengthening. In such an eventuality, expenditure involved will be correspondingly reduced.

Clause 13 provides for the appointment of Government Analysts. The expenditure on the Government Analysts is included in the above recurring expenditure for environmental laboratories.

The authority to be constituted under section 3 may cause contingency plans to be formulated by various agencies or authorities for meeting any emergency situations. These may involve provision of certain equipment and facilities. It is, however, not possible at this stage to quantify such likely expenditure.

No other recurring or non-recurring expenditure is involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3(3) empowers the Central Government to constitute an authority or authorities for the purposes of exercising such of the powers or functions of the Central Government under the legislation as that Government may deem necessary or expedient. Clause 6 empowers the Central Government to make rules to carry out the purposes of the legislation in respect of the matters falling within the purview of clause 3 (1). Clause 6(2) enumerates some of such matters. Clause 7 empowers the Central Government to lay down, by rules, the standards in excess of which environmental pollutants shall not be discharged or emitted.

2. Clause 8 empowers the Central Government to make rules to lay down procedures and prescribe safeguards in accordance with which hazardous substances shall be handled. Clause 9 empowers the Central Government to prescribe, by rules, authorities or agencies which shall be bound to prevent or mitigate environmental pollution and to whom the intimation of the fact of an occurrence or apprehension of an occurrence relating to environmental pollution shall be given. Clause 11(1) empowers the Central Government to prescribe, by rules, the manner in which samples of air, water, soil or any substance shall be taken. Clause 11(3) empowers the Central Government to prescribe, by rules, the form in which a notice of intention to have a sample analysed shall be given. Clause 12(2) empowers the Central Government to make rules prescribing the functions of the environmental laboratories; the procedure for the submission to such laboratories of samples of air, water, or soil or any other substance for analysis or test; the form of laboratory report; the fees payable for such report; other matters enabling such laboratories to carry out their functions and the qualifications of Government analyst appointed or recognised. Clause 19(b) empowers the Central Government to prescribe, by rules, the manner in which the notice of intention to make a complaint shall be given. Clause 20 empowers the Central Government to prescribe, by rules, the authority or officer to whom any reports, returns, statistics, accounts and other information shall be furnished.

3. The matters with respect to which the rules may be made under clauses 6, 7 and 8 are matters of highly technical and specialised nature. In most of such matters, it would be possible to frame rules only after detailed study, research and investigation. It is therefore, not practicable to make provisions for the same in the Bill and the delegation of legislative power is thus necessary and unavoidable. The remaining matters with respect to which rules may be made are matters of administrative or procedural details for which it is not practicable to make provisions in the Bill. The delegation of legislative power in respect of these matters is, therefore, of a normal character.

SUBHASH C. KASHYAP,
Secretary-General.

